

History and Background Regarding

Chapter 4, *Appeals from Actions of the Franchise Tax Board,* of the New Rules of Practice

A. First Draft of Chapter 4

Staff posted all five chapters of the New Rules of Practice on the Board's website on September 14, 2005,¹ and then presented them all to the Board and the interested parties at the September 28, 2005, Board meeting.²

The first draft of chapter 4 added to and improved upon the Board's pre-existing procedures by providing a new briefing schedule for innocent spouse appeals and participation by the non-appealing spouse (section 4032 of first draft); an elective streamlined briefing schedule for cases where the amount at issue does not exceed \$5,000, which required persons who made the election to waive their oral hearings (section 4033 of first draft); a new briefing schedule for Homeowners' and Renters' Property Tax Assistance (HRA) appeals, which only permitted the FTB to file one brief (section 4034 of first draft); and a new procedure for the Appeals Division to request supplemental briefing prior to a Board hearing in order to clarify the facts and issues (section 4035 of first draft).

B. Second Draft of Chapter 4

Staff made revisions to chapter 4 based upon discussions with the FTB and the suggestions the interested parties made at meetings held in October and November of 2005, and posted a second draft of chapter 4 on the Board's website on December 9, 2005.³ The second draft of chapter 4:

- Added electronic filing procedures (section 4020, subd. (c), of second draft);
- Provided the Chief of Board Proceedings with discretion to grant extensions of time to file briefs (section 4030, subdivision (c), of second draft);
- Combined the new streamlined elective briefing schedule in section 4033 of the first draft with the similar HRA appeals briefing schedule in section 4034 (section 4033 of second draft);
- Added appeals conference procedures to all appeals from the FTB (section 4040 of second draft);
- Required the Appeals Division to prepare Decisions and Recommendations (D & R's) at the conclusion of the new appeals conferences (section 4041 of second draft);

¹ The first drafts of chapters 1-5 may be viewed at the following links, respectively:

<http://www.boe.ca.gov/regs/pdf/Part1StatementIntentTitle.pdf>,

<http://www.boe.ca.gov/regs/pdf/Part2BusinessTaxesMaster1.pdf>,

<http://www.boe.ca.gov/regs/pdf/Part3PropertyTaxMaster.pdf>,

<http://www.boe.ca.gov/regs/pdf/Part4FranchiseIncomeTaxMaster.pdf>,

<http://www.boe.ca.gov/regs/pdf/Part5BoardHearingProceduresMaster.pdf>.

² The Power Point presentation and the transcript from the meeting may be viewed at the following links, respectively:

<http://www.boe.ca.gov/regs/pps/September28MeetingMaster.pps>,

<http://www.boe.ca.gov/regs/pdf/092805Transcripts1662.pdf>.

³ The revised, second draft of chapter 4 can be viewed at <http://www.boe.ca.gov/regs/pdf/part4revision.pdf>.

C. Third Draft of Chapter 4

Staff held the first interested parties meeting to discuss chapter 4 on December 14, 2005, and the interested parties made several suggestions to improve chapter 4 to make the language more clear and make the procedures work more smoothly.⁴ Based upon the suggestions from the interested parties,⁵ staff revised chapter 4, posted a third draft of chapter 4 on the Board's website on January 18, 2006⁶, and then discussed the third draft at a second interest parties meeting on March 15, 2006.⁷ The third draft of chapter 4:

- Clarified the Board's jurisdiction to hear appeals from the FTB and added some limitations (section 4012 of third draft);
- Added a new section 4020.5 to govern the filing of all documents under chapter 4;
- Created two alternative versions of section 4021 (one by staff and one by FTB);
- Created two alternative versions of section 4022 (one by staff and one by FTB) regarding the acceptance or rejection of an appeal;
- Transferred the authority for granting extensions for filing briefs and reply briefs to the Chief Counsel, and provided previously omitted provisions for the filing of non-party briefs (sections 4030, 4031 and 4032 of third draft);
- Added a provision protecting each spouse's personal contact information from the other spouse innocent spouse appeals (section 4032 of the third draft);
- Provided for an alternative proposal to eliminate the elective streamlined briefing procedures for HRA appeals;
- Revised the elective, streamlined briefing schedule (section 4033 of third draft);
- Added provisions permitting both spouses in an innocent spouse appeal to request oral hearings, and permitting the Board to provide them with separate hearings in cases where holding a single hearing is prohibited by a court order or might be unsafe or disruptive (section 4040 of third draft);
- Replaced the mandatory appeals conference procedures with new procedures granting the Board and the Appeals Division discretion to hold pre-hearing conferences (section 4042.5 of third draft);
- Revised the provisions regarding D & R's and hearing summaries (section 4043 of third draft);

⁴ A transcript of the December 14, 2005, meeting can be viewed in three parts at: <http://www.boe.ca.gov/regs/pdf/reporters1214pt1.pdf>, <http://www.boe.ca.gov/regs/pdf/reporters1214pt2.pdf>, and <http://www.boe.ca.gov/regs/pdf/reporters1214pt3.pdf>.

⁵ A matrix showing the interested parties comments and staff's responses can be viewed at <http://www.boe.ca.gov/regs/pdf/Matrix-1-19-06.pdf>.

⁶ The revised text of the third draft of chapter 5 can be viewed in both a clean and an underline and strikethrough format at the following links, respectively: <http://www.boe.ca.gov/regs/pdf/Part%204-Clean-1-19-16.pdf>, and <http://www.boe.ca.gov/regs/pdf/Part%204-Underline%201-19-06.pdf>.

⁷ A transcript of the March 15, 2006, meeting can be viewed at: <http://www.boe.ca.gov/regs/pdf/InterestedPrty031506.pdf>.

D. Fourth and Current Draft of Chapter 4

After the May 17, 2006, Board meeting staff reexamined chapter 4, and began to prepare the fourth draft which staff recommends for the Board's approval. Staff deleted the elective streamlined briefing process, and all cross-references there to, because the Board Members did not appear to support the waiver requirement. Staff deleted the provisions permitting the Chief of Board Proceedings to deny appellants oral hearings under certain circumstances because the provisions also appeared to lack support from the Board Members who seemed open to hearing such appeals. Staff also revised chapter 4 to meet plain language requirement and be less technical. Finally staff:

- Added language that would take into account subsequent statutory changes in the Board's jurisdiction (section 5000.4012 of fourth draft);
- Added language requiring HRA appellants to state why they are entitled to assistance in their appeals (section 5000.4020 of fourth draft);
- Added discretion for the Board to accept additional evidence at an appellant's oral hearing (section 5000.4030 of fourth draft);
- Clarified the brief filing deadlines in innocent spouse appeals (section 5000.4032 of fourth draft);
- Provided discretion for the Board Members to contact the Appeals Division and request additional briefing from any party (section 5000.4035 of fourth draft);
- Revised the pre-hearing conference procedures for automatic postponement of an oral hearing during the Appeals Division conferences (section 5000.4042.5 of fourth draft);
- Revised the contents of hearing summaries so that they contain the Appeals Division's analysis, comments, and questions for the parties (section 5000.4043 of fourth draft);
- Moved the provisions regarding the adoption of dissenting and concurring opinions to revised chapter 5;
- Clarified the Board Proceedings Division's notice requirements (section 5000.4061 of fourth draft); and
- Added discretion for the Board to limit the scope of a rehearing (section 5000.4063 of fourth draft) and modify the prescribed briefing schedule (section 5000.4064 of fourth draft).